

## **MINUTES OF THE CITY PLANNING COMMISSION J. MARTIN GRIESEL ROOM**

October 17, 2003  
10:30 AM

**Present:** Appointed Members: Donald Mooney, Terry Hankner, Caleb Faux, Peter Witte; Councilmember James Tarbell; Valerie A. Lemmie, City Manager; Community Development and Planning Staff: Peg Moertl, Director; Skip Forwood, Acting Chief Planner

Ms. Hankner called the meeting to order.

### **MINUTES**

The minutes of THE July 31, August 22 and September 5, 2003 of the City Planning Commission (CPC) meetings were presented for consideration.

**Motion:** Mr. Faux moved approval of the minutes of July 31, August 22 and September 5, 2003.

**Second:** Ms. Hankner

**Vote:** All ayes (5-0), motion carries.

### **ZONING CODE**

Mr. Kurtz stated that at the last meeting, Bob Burroughs stated that a number of manufacturing concerns located in North Oakley operate with a line of credit and the reduction in retail opportunities would put them into material default based on the potential value of their property. Instead of rewriting the entire manufacturing district Mr. Kurtz proposed changing the map designation on those three particular companies to commercial zoning. The Commercial General Automobile District allows unlimited retail as well as the production industry category which staff believes covers the three existing companies (Milacron, CastFab and Precision). Mr. Kurtz has contacted the owners of the three companies or their legal representatives and they are in agreement.

Ms. Hankner asked Mr. Burroughs if he is in agreement. Mr. Burroughs stated that he is. Mr. Burroughs stated that he feels that Mr. Kurtz did a great job of resolving this without having to rewrite the entire code and he appreciates the concern and flexibility of staff and the Planning Commission.

Ms. Hankner stated that at the last meeting we were working on the "15 Concerns" and will pick up where we left off at that meeting which is #5 - Signage. Ms. Hankner also stated that a revised copy from the Cincinnati Neighborhoods Zoning Task Force dated 10/ 17/03 was distributed to the Planning Commission and staff.

Gary Robbins, 717 Froome Avenue, 45232, from Winton Place and is involved with the Cincinnati Neighborhood Zoning Task Force. Mr. Robbins stated that they have met with some of the councilmembers and council candidates and are pleased with their interest in the zoning code and the issues that residents and property owners have.

Mr. Robbins stated they have a petition based on:

1. Need to have a revised code as it is out of date and not doing anyone any good.
2. Code to be neighborhood friendly – there are a number of things that are not neighborhood friendly and would like to work it out. Would like to create a win/win modification to the code.
3. Desire to have planning – Aware there is no future looking plans for neighborhoods.

Mr. Robbins stated that initially there were three neighborhoods backing the petition (Winton Place, Hyde Park and North Avondale). The task force has been networking with other neighborhoods that have concerns about the zoning code and now have a number of neighborhoods that endorse their goal (Paddock Hills, Mt. Washington, Avondale, West Price Hill, Westwood, East Price Hill, Kennedy Heights and some others).

#### **ITEM # 1 – M-1 REZONED TO ML**

David Rosenberg, 5115 Wooden Shoe Lane, 45232 lives in Winton Place and is an M-1 property owner.

Ms. Hankner asked what is different in the revised packet from the packet presented at the last City Planning Commission meeting. Mr. Rosenberg stated that the spreadsheet, the discussions and recommendations are new. Mr. Rosenberg read the discussion into the record.

Mr. Rosenberg stated the recommendation is to mandate an extensive overhaul of the ML District to:

- Keep any commercial uses accessory to manufacturing,
- Only allow limited large-lot single-family homes,
- Add other creative uses that would enhance a neighborhood manufacturing district, and
- Let the decision for more intensive uses rest in the hands of the community's property owners by making non-listed changes conditional to a zoning variance.

Dick Hagadorn, 5054 Gray Road, stated that he owns about nine and one-half acres that he bought as an investment and does not want the property to be zoned less than what it was when he purchased the property and is concerned that ML allows things the he would not want next to him.

Mr. Kurtz responded that one of the directions of the City Planning Commission to the staff was to allow and provide for more mixed-use opportunities in the new zoning code.

Ms. Moertl stated that the administration has committed to owners of properties, particularly in Winton Place, which are in this designation and agricultural that are unique in the city to go back after the zoning code is adopted to determine whether there is a particular overlay or other process to help protect the special uses.

Mr. Tarbell feels it is important to reiterate the sentiment to protect some of the uniqueness in the city.

Mr. Rosenberg stated that it is a bad idea to lose the manufacturing property, but is in favor of retail and commercial uses in manufacturing and housing. The average house in this area is on a 20,000 - 40,000 square foot lot. To allow housing on a 2,000 square foot lot makes it clear that the direction is to put housing and commercial uses in and not keep the manufacturing.

Mr. Tarbell stated this allows the flexibility to allow a 2,000 square foot lot, which does not exist now.

Mr. Kurtz stated that staff has done a considerable amount of rezoning in Winton Hills/Winton Place and have taken some ML and made it SF-20 at the communities' request. Mr. Kurtz reemphasized that the whole code is about mixed-use development and creating new opportunities and reminded everyone this is first and foremost a "Manufacturing District."

Leslie Poindexter, Gray Road, appreciates the flexibility of being able to put 20,000 square feet among ML. Ms. Poindexter feels that zoning the landfill and her property to ML could become an oasis of the city and hopes that a compromise can be reached.

Mr. Robinson, 1261 Michigan, 45208 stated that the one-size fits all could be harmful in some areas of the city where the restrictions embedded in M-1 are good for parts of the city. Mr. Robinson stated that some parts of the city might need another code to protect that particular area. The changes that occur in an ML are significant.

**Mr. Mooney entered the room.**

Lee Robinson, 1261 Michigan, 45208, stated that he has not heard the opinion of the Hyde Park Community Council regarding Observatory. Mr. Eubelacker responded that the Hyde Park Community Council spent many hours on the long-range plan for the community, which calls for the retention of residential zoning on the south side of Observatory. He stated that the Hyde Park Square Conservation Plan was adopted by City Council as the guiding document for the development of Hyde Park Square. The area in question is in the area of Hyde Park Square. Mr. Eubelacker stated that this conservation plan explicitly calls for maintaining all existing residential use within the Hyde Park Square boundary. He also stated that there has been no substantive evidence to show that the plan is wrong; therefore the Hyde Park Neighborhood Council, the residents in the immediate vicinity along with the environmental quality committee support the policies that are outlined in the plan. Mr. Eubelacker feels that changing this zoning would create a myriad of problems that do not exist today and only

benefit the businesses by impacting the residential areas to the south and creating more parking challenges.

Lee Robinson stated that he owns three buildings on the blocks in question. He believed that when the Hyde Park Square Conservation Plan was adopted some 25 years ago, it was probably a good plan, but the area is different today. Mr. Robinson stated that this area is not a residential block and staff originally stated that this should be zoned office. Mr. Robinson agrees with Mr. Eubelacker that there are parking challenges, but feels this is a good problem because it is evidence of a successful area. Mr. Robinson stated that the residents behind the commercial uses on Edwards and Michigan are already next to commercial buildings.

John Chiodi, 2723 Observatory, 45208 stated that he grew up in the area and that there has been a good change in the neighborhood. Mr. Chiodi stated that he totally agrees that this area should be zoned office.

Ms. Hankner asked how many of the five property owners are in attendance. Mr. Robinson responded that four are in attendance and one was unable to attend but is in total agreement.

Mr. Mooney stated that at the last meeting, gas stations and auto repair were deleted from the ML. Mr. Mooney asked if anyone wants to make any additional changes to the ML. No motion was made.

#### **ITEM #5 – SIGNS**

##### *Items #1, 2 and 3*

Mr. Eubelacker stated that in the OL the sign regulations are less restrictive such as increasing the ground sign square footage from 12 square feet to 36 square feet; the size of a canopy has increased from 12 square feet to 36 square feet.

Mr. Mooney asked how OL fits into the overall scheme.

Mr. Kurtz responded the OL was primarily a combination of O1-A and O-1. Mr. Mooney asked if the 36 square feet would apply to the environmental quality districts. Mr. Kurtz responded that the environmental quality districts could be more limiting.

Mr. Mooney asked what applies in terms of signs at Hyde Park Square. Mr. Efland responded there are additional sign regulations in the Environment Quality-Urban Design (EQ-UD) District that take precedent over the sign chapter.

Mr. Eubelacker stated that the restrictions in the EQ-UD do not include a restriction to 12 square feet instead of 36 square feet.

Mr. Eubelacker stated that Items 1, 2 and 3 under Item 5: Signs should remain as they are.

Mr. Efland used a chart to show the ground signs and wall signs in OL, O1-A and O-1. Mr. Efland stated that it is true that we are proposing a 36 square foot per sign face for a ground sign in the OL District versus 12 square feet per sign face in the O1-A and O-1 currently. Staff has also proposed an additional maximum width requirement of six feet in the OL, which currently there is no maximum. Staff has also proposed a minimum setback requirement where there currently is none. Mr. Efland stated that there are some items that are less restrictive and some items that are more restrictive. Mr. Efland stated in the O1-A and O-1, 50 square feet is the maximum allowable. Mr. Efland gave an example of a sign budget for the OL, O1-A and O-1 Districts.

*Item #4*

Mr. Eubelacker stated that Item #4 has not been addressed by the current or proposed code. The OL District permits the maximum height of a ground sign of six feet. Mr. Eubelacker stated that the recommendation is to change the new code and limit the height to six feet above sidewalk grade or three feet above finished grade whichever is higher.

Mr. Efland stated that the Pittsburgh Code states one cannot artificially mound underneath a sign for the purposes of raising the sign height, which he feels is a good idea to add in the proposed zoning code.

Mr. Mooney asked if anyone wanted to make a motion to change anything on Items #1, 2, 3 or 4. No motion was made.

*Item #5*

Mr. Eubelacker stated that the maximum sign area based on lot frontage effects many communities. Mr. Eubelacker stated that the size of the sign in the new code is predicated on the frontage of the property and not the size of the building, which would allow a use (such as a bank) to have a significant amount of signs.

Mr. Efland stated that while there is a huge amount of sign budget on a lot with considerable frontage, there are restrictions for each individual type of sign.

Mr. Mooney asked if there was a motion for Item #5. No motion was made.

*Item #6*

Mr. Efland stated that staff has no objection to the recommendation regarding rays of light.

**Motion:** Mr. Witte moved to incorporate "and so arranged that no direct rays of light are projected from such artificial source into residences or streets."

**Second:** Mr. Tarbell

**Vote:** All ayes (4-0), motion carries.

*Item #7*

Mr. Eubelacker requested the definition of a district, which establishes a district and how it is calculated.

Ms. Moertl responded that the designation on an area is the district. A site is a lot or a combination of lots that make up a development.

*Item #8*

Mr. Eubelacker stated that the CN-P does not permit ground signs where an existing building sits back more than 15 feet from the public right-of-way as the current EQ in Hyde Park does and will no longer exist with the adoption of the new code.

Mr. Mooney asked Mr. Eubelacker if he wants ground signs. Mr. Eubelacker responded that ground signs should be permitted for existing buildings because they exist in the EQ District. Mr. Mooney stated if ground signs are preexisting, they may continue unless the use associated with the sign is abandoned.

**ITEM #6 – TRANSITIONAL HOUSING**

Gerry Kraus stated that transitional housing programs 5 and 6 that involve drug and criminal halfway facilities housing convicted criminals are not permitted in the single-family zones but are permitted in the OL and ML Districts in the proposed code. Ms. Kraus stated that task force recommends they not be permitted in OL and ML Districts even as a conditional use and should start in a less restrictive district because OL and ML Districts are located in neighborhoods.

Mr. Kurtz responded that they are not permitted in the O-1A but are permitted in the O-1. The OL combines those two districts and made them a conditional use. Mr. Kurtz stated that there was a similar situation in the M-1 and M-2 Districts, whereas M-1 did not allow these facilities and M-2 did so they were made conditional uses in the ML.

**Motion:** Ms. Hankner moved to not permit transitional housing programs 5 & 6 in OL and ML zones even as a conditional use.

**Second:** Mr. Faux

**Vote:** All ayes (5-0), motion carries.

Ms. Kraus stated that she could not find anywhere in the code where a juvenile detention facility was permitted. She feels if these facilities are not permitted anywhere that they are permitted everywhere. Ms. Kraus stated that the task force recommends that a zoning district be designated where juvenile detention facilities are permitted.

Mr. Kurtz responded that this was an oversight and that if it is not listed as permitted, it is not permitted. Mr. Kurtz stated they could be added as a permitted or a conditional use in the MG District because it is equivalent to the M-2 which is permitted today.

- Motion:** Mr. Faux moved to add juvenile detention facilities as a conditional use only in the MG District.
- Second:** Ms. Hankner
- Vote:** All ayes (5-0), motion carries.

### ITEM #7 MAPS

Mr. Mooney disagrees that someone other than the staff; the Planning Commission and the communities take a look at the maps. Mr. Faux stated that there might be a difference in opinions regarding how the code gets applied to the maps but for the Cincinnati Zoning Task Force to characterize the efforts of staff as all mistakes is totally inappropriate.

### ITEM #8 – MANDATORY NOTIFICATION

Mr. Kurtz stated that the current code states that a decision is not invalid if proper notification is not provided.

Ms. Kraus suggested sending notifications by certified mail.

Mr. Faux responded that he feels that is an unnecessary cost burden on the city.

**Mr. Tarbell stepped out.**

Ms. Kraus stated that this issue came up because the proposed code states 'it will not invalidate any decision if proper notice is not given'.

- Motion:** Mr. Faux moved to remove the last sentence of Section 1443-05 "The failure of the examiner to notify an owner or organization or to meet the time frames established in this section will not invalidate any decision."
- Second:** Ms. Hankner
- Vote:** All ayes (4-0), motion carries.

### #9A – ML PROPERTY OWNER NOTIFICATION

Mr. Robbins stated changing parcels to ML should require notification to the property owners because it is a significant land use change. Mr. Mooney responded that the Planning Commission and staff have been working on the theory that if the proposed zoning code and maps are adopted, notification is not necessary to every person in the city. Mr. Mooney noted that some multi-family has been changed to single-family and notification would have to be sent to those property owners as well.

Mr. Robbins cited that notification of changes is required to be advertised in a newspaper of general circulation to alert people that there is a change. Mr. Kurtz responded that a public hearing for a zone change which, the proposed zoning code would be, requires there be notice in the *City Bulletin* which is a newspaper of general circulation.

Mr. Robbins asked if there has been notification. Mr. Kurtz responded that there has not been a public hearing scheduled yet. Ms. Moertl clarified that there has been repeated notices and publications in both the *City Bulletin* and the newspaper for all the public hearings that have been held throughout the city and there will be a final notice regarding the adoption of the proposed zoning code.

Mr. Mooney asked if anyone wanted to make a motion.

**Motion:** Mr. Witte moved to provide more specific notification than has already been done.

Motion failed for lack of a second.

### **9B – EFFECTIVE NOTIFICATION – EQ DISTRICT**

Mr. Eubelacker stated that the new code eliminates neighborhood involvement in the EQ application process and does not provide for notice of an approval which eliminates any neighborhood appeal when it is believed that the Director of Buildings and Inspections or the hearing examiner has made a decision in error. Mr. Eubelacker is asking that the proposed code should allow for a community review and comment period to allow the community organizations and any abutting neighbors the opportunity of a week to submit comments to the director before any decision is made.

Ms. Hankner is of the opinion that if the EQ meets all the requirements, the appropriate appeal would be a legal appeal.

Mr. Faux stated we did change the grounds for appeal to the Zoning Board of Appeals to include any decision of this type.

Mr. Kurtz responded that some people are not accepting the new concept of how EQs are operating in the proposed zoning code. There are 14 EQ Urban Design Districts with 248 different *guidelines* that are subject to discretionary review that may or may not be followed. In the direction of streamlining the zoning code and reducing the number of hearings and adding certainty to the code replacing discretion, a lot of those guidelines are now covered in the base commercial districts, such as, placing the building out to the street, parking in the back, transparency and pedestrian-orientation. From the 248 guidelines, staff tried to combine a set of additional standards that have to be met that each EQ District could choose applicable to their neighborhood. Instead of guidelines, these are regulations that are codified. If an applicant meets all the requirements in the district, the applicant gets a permit. The communities should understand that the permit only gets issued if the requirements are met, but if an applicant wants to exceed those requirements, a hearing is required.

Mr. Faux stated that the proposed zoning code has made it possible to appeal a decision. Mr. Faux suggested that these kinds of applications be posted on the web site so that those who are interested can access those applications.

Mr. Eubelacker stated if the director makes a decision that an EQ application meets the guidelines and someone disagrees, there is no ability to voice that opinion prior to the director's decision. Mr. Eubelacker stated that in the past codified items have been ignored.

Mr. Mooney stated if the director determines that an application conforms to the requirements there should be notice given to the community (adjoining property owners and the relevant community council) in writing so if there is an objection they have 30 days to file an appeal to the Zoning Board of Appeals.

Mr. Kurtz responded that he feels that should be an administrative direction from the City Manager to the Director of Buildings and Inspections; not something to be placed in the code.

Ms. Hankner likes the idea of posting these applications.

**Motion:** Ms. Hankner moved for staff to come up with language indicating that when a permit is granted for an EQ-UD, the Department of Buildings and Inspections will promptly mail notification of the permit granting to the relevant community council(s) and adjoining property owners and post the notice.

**Second:** Mr. Witte

**Vote:** All ayes (5-0), motion carries.

**Motion:** Mr. Faux moved to include the same language in the Hillside Chapter as approved for the UD Chapter.

**Second:** Mr. Witte

**Vote:** All ayes (5-0), motion carries.

Mr. Faux stated if there was a way to know that a decision was going to be made, he sees no reason why the director could not be contacted to express an opinion, which leaves how does one know. Mr. Faux stated that from an administrative standpoint the city follows a policy of making certain that the information is available to those who are interested but feels that does not have to be codified in the code, but a policy decision by the City Manager that that information be posted and available.

### 2711 OBSERVATORY AVENUE

Tom Sorrentino, 2840 E. St. Charles, 45208 stated that he owns the property at 2711 Observatory which had transitional zoning and is in an Environmental Quality-Urban Design District which limits any cosmetic or structural changes. Mr. Sorrentino and seven other property owners on Observatory are objecting to any recommendation by the Hyde Park Neighborhood Council and that the original staff recommendation to zone his property CN-P and the other properties OL in the Environmental Quality District is a right path forward.

Mr. Mooney asked if there is a motion to change the map from RMX to Office Limited. No motion was made.

Mr. Mooney informed Mr. Sorrentino that he and his neighbors could file for a zone change. Ms. Hankner feels that would be a good idea.

**Motion:** Mr. Tarbell moved to change the zoning to OL on Observatory between Michigan and Edwards.

Motion failed for lack of a second.

Mr. Tarbell stated that this is denying the inevitable and not serving any purpose.

Ms. Hankner stated that granting this zone change today would not uphold the zone change process and that when this comes back through the zone change process she would agree with the inevitable.

Mr. Tarbell withdrew his motion.

### **FIVE-MINUTE BREAK**

### **WEST PRICE HILL MAP**

Mary Jo Bazeley stated that two primary entrances are West Eighth Street and Glenway Avenue and are primarily R-5 and being designated RMX. Ms. Bazeley stated that the community's complaint is that these are primarily single-family homes. Mrs. Bazeley stated that there are other streets the community would like some reconsideration.

Mr. Kurtz stated that the reason for RMX – the single-family and two-families are permitted in the RMX but the two-family and multi-family are not permitted in the single-family district and staff was trying to avoid creating additional nonconforming uses.

Ms. Bazeley responded by permitting those uses it allows for increases in those uses.

**Motion:** Mr. Witte moved to authorize Mr. Mooney and Mr. Witte (who are familiar with this neighborhood) to meet with staff and Mrs. Bazeley to make some adjustments to the map to include with the final version to City Council.

**Second:** Mr. Faux

**Vote:** All ayes (5-0), motion carries.

### **ITEM #10 – IDENTIFY CHANGES IN WRITING**

Mr. Mooney asked what the strategy is to brief the communities on what the new zoning code is if it is adopted other than what has been done already. Mr. Kurtz responded that if the code were adopted, in addition to the plans and additional land use studies, staff would be happy to facilitate some community-wide workshops to explain what is in the code and how it is envisioned to work.

Mr. Kraus stated because it is impossible for a compare write between the proposed code and the existing code, he would like to know where the code is made less restrictive so the community can give their input. Mr. Kurtz responded that the proposed code is less restrictive because it allows for a greater mix of uses than the segmented regulated existing code, which was a policy direction.

Mr. Faux stated that the proposed code has been in process for the last four years and there have been several meetings. Mr. Faux appreciates Mr. Kraus' concern as this is very difficult but providing a compare write document would add months to the process if possible at all since the proposed code was started from scratch.

Mr. Robbins stated that he feels that the proposed code organization is a colossal step

forward and the willingness of the staff to facilitate some community-wide workshops is a good thing.

#### **ITEM #11 – MORATORIM ON ZONING CODE CHANGE FEES**

Mr. Kurtz stated the fee for the last 40 years has been \$300 and is proposing to increase the fee to \$1,000 to more adequately reflect the cost of staff time associated with a zone change and is consistent with other local municipalities. Mr. Kurtz suggests that the increase in the fee be waived for six months after the adoption of the code.

Mr. Kurtz stated the community councils cannot request zone changes under the existing zoning code and the request by a majority of owners of 12 continuous properties is not in the zoning code but is a regulation of the Planning Commission. A councilmember can request a zone change as well as a Planning Commission member with no fee requirement.

**Motion:** Mr. Witte moved to waive the zone change fee increase for a two-year period.

Mr. Faux stated that it needs to be recognized that part of the support for Planning staff is through these kinds of fees. Mr. Faux stated that on one hand there needs to be stronger planning, should have a plan, and at the same time cut the source of revenue that provides the ability for strong planning. Mr. Witte responded that there is a huge change being made and there will be residual fall out that will need to be addressed and that a two year time period is a reasonable amount of time. Mr. Faux feels that being able to come to a councilmember of a Planning Commissioner is an adequate route. Mr. Witte feels that it is not as fail-safe; there is no guarantee that a councilmember will initiate the request.

**Motion:** Mr. Witte amended his motion to waive the zone change fee increase for one year.

**Second:** Mr. Tarbell

**Vote:** Ayes: Witte, Tarbell, Mooney, Faux; Nays: Hankner, (4-1), motion carries.

#### **ITEM #12 - DISCRETION**

The Cincinnati Neighborhoods Zoning Task Force recommends changing all the *may* words to *shall* in Chapter 1451 because *shall* is mandatory and *may* is discretionary.

**Motion:** Mr. Tarbell moved to change may to 'shall' in Section 1451-03.

**Second:** Ms. Hankner

**Vote:** All ayes (5-0), motion carries.

**Mr. Witte stepped out.**

The Planning Commission went through Chapter 1451 to determine if the word *may*

should be changed to *shall*.

- Motion:** Ms. Hankner moved to make the following changes:  
Section 1451-07  
first paragraph: change may to 'shall'  
(a) change may to 'shall'  
(b) change may to 'shall'  
Section 1451-13  
Second paragraph change may to 'shall'  
Third paragraph: Delete 'This section does not apply'
- Second:** Mr. Faux
- Vote:** All ayes (4-0), motion carries.

**Mr. Witte left the meeting.**

### **ITEM #13A – ACCESSORY USE**

#### *Recommendation #1*

Mrs. Kraus stated the Cincinnati Neighborhoods Zoning Task Force recommends returning the language in the present code [1403-100-A1] to read "serving a purpose customarily incidental to the use of the principal building or land use" in the definition in the new code.

- Motion:** Mr. Faux moved to add the phrase 'and customarily incidental' after the word subordinate in Section 1401-01-A3. Accessory Use.
- Second:** Ms. Hankner
- Vote:** All ayes (4-0), motion carries.

#### *Recommendation #2*

Mrs. Kraus stated there can be two rooming units in all residential zones and is not specified that the rooming unit(s) has to be customarily incidental to the use of the principal building and there was not provision for off-street parking. Mrs. Kraus stated that the Cincinnati Neighborhoods Zoning Task Force recommends to eliminate the provision that permits two rooming units to be rented in all SF zones.

Julia Carney, Senior City Planner, responded that staff recommends against this change because it may be in the best interest of the home owner of these large homes to rent rooms out in order to supplement the upkeep.

- Motion:** Ms. Hankner moved to eliminate rooming units from SF-20 and SF-10.
- Second:** Mr. Tarbell
- Vote:** All ayes (4-0), motion carries.

### **ITEM #13B – SUMMARY OF USE REGULATIONS**

Mrs. Kraus stated that accessory uses are not included in the Summary of Use Regulations at the beginning of the proposed new zoning code. Mr. Kurtz stated that the Summary of Use Regulations is not a part of the zoning code but that the accessory

uses can be added.

**Motion:** Ms. Hanker moved to add accessory uses to the Summary of Use Regulations Chart.

**Second:** Mr. Faux

**Vote:** All ayes (4-0), motion carries.

### **ITEM #13C – ACCESSORY USES AS CONDITIONAL IN CG-A AND MG**

Mr. Kraus stated that accessory uses not listed in the zoning code are left at the discretion of the Director of Buildings and Inspections. Mr. Kraus, on behalf of the Cincinnati Neighborhoods Zoning Task Force, recommends that all accessory uses not specifically listed in the zoning code be a conditional use in the CG-A and MG zoned districts until staff can determine where the accessory uses not listed should be in the code and whether they should be conditional or permitted uses.

Mr. Kurtz responded that if there is a new use such as 'cell towers' that are not addressed in the zoning code, a text amendment would be done and in the case of the 'cell towers', that is a land use and not an accessory use. Mr. Kurtz stated that with an accessory use, the chief building official, enforcer of the zoning code, had to be given some discretion to determine if the use is similar to an existing accessory use.

David Efland, Senior City Planner commented that all accessory uses not listed require conditional use approval.

Ms. Hankner does not believe that the entire discretion of the Director of Buildings and Inspections can be taken away, but there is an appeal process and there is the ability to react to something new that has not come up before.

Ms. Hankner asked if something is not specifically provided for in the code where it would be permitted as Mr. Kraus feels if something is not specifically provided it can go anywhere in the code.

Dotty Carman, Assistant City Solicitor, stated if it is not provided for in the code, it is not permitted anywhere. Ms. Hankner asked Ms. Carman if she would defend the city in the decision until a text amendment could be provided if so needed. Ms. Carman responded that she would. No motion was made.

### **ITEM #14 – DEFINITION OF COMMERCIAL VEHICLE**

Mr. Kraus stated that the definition of commercial vehicle needs to be rewritten so that construction vehicles and equipment cannot be parked in residential zones. Also parking for Recreational Vehicles needs to be addressed. Mr. Kraus stated that the task force recommends:

#### *Recommendation 1:*

The definition of "commercial vehicle" should include language that reads, "construction vehicles and equipment cannot be parked in a residential zone on or off-street unless it

is being used in construction work at that location whether or not it is licensed as a commercial motor vehicle.

*Recommendation 2:*

The definition of "Recreational Vehicles" should include boats and trailers and recreational vehicles should not be permitted to be parked in view from the street nor should they block egress by other vehicles that are permitted to park off-street.

Mr. Efland stated that one commercial vehicle that is completely enclosed in a garage is allowed and one on the street. Mr. Kraus asked about a trailer that is used for a business with two wheels. Mr. Efland responded that the trailer would be considered a recreational vehicle. No motion was made.

### **ITEM # 15A – WASTE COLLECTION**

Mr. Kurtz affirmed that most of what is in the proposed zoning code is in the existing code. Mr. Kurtz stated that in a discussion with the Planning Commission and the Technical Review Committee it was determined to leave the text alone because enforcement is not in the purview of the city but the Ohio EPA, Hamilton County EPA and the Federal Government.

Mr. Robbins feels this is an opportunity to review and maybe solicit public discussion on how to tighten the loopholes in the zoning code as it relates to protecting residential areas from the detrimental effects of having nearby waste collections. Mr. Mooney responded that this is a whole separate subject from the zoning code, but might involve some amendments to the code in the future.

### **ITEM #15B – WASTE TRANSFER STATIONS**

Mr. Mooney asked what type of use waste transfer stations are now. Mr. Kurtz responded that waste transfer stations are an intermediate waste use in the existing zoning code. Mr. Mooney stated that he doesn't understand why waste transfer stations cannot be a conditional use in the ME District since there are oil and gas storage, outdoor storage and waste disposal as a conditional use in the ME District.

**Motion:** Ms. Hankner moved to make waste transfer stations a conditional use in the ME District.

**Second:** Mr. Mooney

**Vote:** All ayes (4-0), motion carries.

### **ITEM #16 – ELIMINATE ALL DISCRETIONARY DECISIONS**

Mr. Mooney stated that Item #16 relates to discretionary decisions in various chapters of the zoning code.

Mr. Faux commented that this is a policy decision; that the charge given by City Council given to the Planning Commission and staff to develop a new code was to create a code that was less obstructiveness to things happening in the city and one of the ways

we tried to do that is to provide for some limited discretionary decision making on points that are not major thereby allowing the process to move forward.

Mr. Kraus stated that the stability of a residential neighborhood is because of the zoning and that is why he feels it is important to limit discretion as much as possible in enforcing and interpreting the zoning code.

Mr. Mooney responded that there has to be a certain amount of flexibility in applying standards or the city will be so restrictive or permissive that no one will be happy. Mr. Mooney feels that the proposed zoning code has a lot less discretion than the existing zoning code.

Ms. Hankner agrees with Mr. Kraus' statement on residential neighborhood stability but that there still needs to be some discretion. No motion was made.

### **ITEM #17 – NONCONFORMING USES**

Mr. Eubelacker asked if a nonconforming use has been removed, why is there a two year period before the nonconforming use is extinguished. Mr. Kurtz responded that the Department of Buildings and Inspections had allowed a nonconforming use to be reestablished within a two-year period.

Ms. Hankner stated that abandonment needs to be defined.

**Motion:** Mr. Faux moved to make the following changes Chapter 1447-07:  
Second paragraph: Change 730 to 365  
After 'within the structure' add 'or the removal or destruction of the nonconforming elements.'

**Second:** Ms. Hankner

**Vote:** All ayes (4-0), motion carries.

### **ITEM #18 – TRANSITION ZONES**

Donald Swain, 1210 Westminster, 45229 is representing Paddock Hills and would like the zoning code to be neighborhood and property owner friendly. Mr. Swain submitted a petition from the effected property owners in Paddock Hills. He is concerned with the elimination of transitional zones which act as buffers for commercial and industrial development next to residential areas. Mr. Swain stated that the proposed Paddock Hills zoning map eliminates designation R-2(T) from 1267 Tennessee Avenue and changes the zoning to CC-A. He stated that CC-A would permit a wide variety of light industrial uses including a small scale specialized incinerator. Another property on Avon Drive adjacent to the east side of Reading Lane zoned R-4(T) is proposed to be zoned CG-A allowing for a variety of commercial uses. Mr. Swain stated the petitioners request the City Planning Commission to retain the transitional zones or not approve the Paddock Hills map changes until further input on the two areas.

Mr. Kurtz responded that the elimination of the transition districts was made three years ago. The transition district allows a property owner to request the uses of the less

abutting restrictive district and guidelines are typically established with transitional zoning to deal with buffering. The new zoning code has a chapter regarding buffering and landscaping which mandates and requires sufficient and adequate buffer yard restrictions. Mr. Kurtz stated that in the remapping, the larger transition zones have been designated as Planned Development Districts and the smaller transition zones are more reflective of their existing use.

Carl Eubelacker, 2851 Victoria, 45208 stated that other neighborhoods also have use issues.

Ms. Moertl stated that the issue of transitional zoning comes up at nearly every public meeting and when the buffering chapter of the proposed zoning code is explained that has been satisfactory in most cases.

Gerry Kraus, 1227 Stratford Place, 45229 stated that Item #18 was added after talking to a number of neighborhoods whose major concern was transition zones. The concern is the transition zone is being eliminated and the least restrictive use is being put in their place. Recommends that the transition districts be zoned with the most restrictive use or keep the transition zones in the neighborhoods that want them. Ms. Kraus stated that she is concerned that the buffer and landscaping chapter does not provide the same protection of having a development plan approved by the Director of Buildings and Inspections, having a public hearing with notification to adjacent property owners and the appropriate community council.

Mr. Kurtz responded that there are four buffer yard options that are dependent upon the use and the abutting use. Mr. Kurtz reminded the Commission that one of the primary factors of the zoning code was to reduce the number of hearings and discretionary reviews and the remapping is based on the existing use.

Carl Eubelacker stated that there is a property at 3649 Michigan Avenue in Hyde Park that had a development plan that had a residential property abutting it and that part of the development plan approved by the director stated that the house remain a residential use although the rear yard could be used for parking to support the development. The property has been designated as a CC-A use, which means that the terms applied to keep the house, would no longer exist. Mr. Eubelacker feels that the property should remain a residential use and the rear parking a nonconforming use.

Marvin Kraus, 1227 Stratford Place, 45229 stated that if transition zoning is eliminated and the properties revert to the less restrictive use, all the development plans will be wiped out. Mr. Kurtz responded that there is a stipulation in the ordinance which indicates that any property currently operating under a decision with guidelines or conditions that were issued either by a hearing examiner or the Director of Buildings and Inspections will continue to abide by those conditions until the use changes, at which time compliance with the new zoning code would be required.

Reginald Lyons, Zoning Administrator, Buildings and Inspections stated that another reason for the elimination of the transition zone was there were concerns by City Council that some communities that have business strips with residential backing up to

them had no protection. Staff incorporated into the zoning code buffers for all the districts in the city and not just the transition zone districts.

David Efland, Senior City Planner stated whether applying least or most restrictive uses, most of the transition zone strips come on industrial or commercial property. Mr. Efland stated that a small-scale incinerator is an accessory use although some limited production industry uses are allowed within the CG-A.

Ms. Krauss stated that North Avondale also has some specific transition zone issues. Ms. Hankner responded that those issues should be discussed with staff after the meeting.

Mr. Faux stated that transition zoning is a fundamental policy question that has been at the bottom of discussion about the zoning code for two years and the Planning Commission has consistently and repeatedly made the decision to follow the course we have in respect for transition zones.

Mr. Mooney stated that in the future when a development is to take place in a business district that adjoins a residential district, there are standards in the code creating sufficient buffers. Mr. Mooney feels that the elimination of the long negotiation process is a good decision.

Mr. Kraus feels that to accept a five-foot wide, six-foot high landscaping buffer to separate the SF-20 property in North Avondale from the proposed McDonald's site is totally destructive to the neighborhood. Mr. Efland responded that the proposed code states that if the McDonald's site has no loading, a ten foot wide, six foot high fence and trees or a berm of four feet and some trees is required. If the McDonald's site has loading a 20-foot wide buffer is required.

### RECONSIDERATION

Mr. Kurtz requested the Planning Commission to reconsider the decision to change the minimum three foot side yard to a minimum five foot side yard in the SF-4 District as the five foot minimum prevents most properties from constructing driveways in a side yard.

Mr. Eubelacker is concerned that there is a lot of SF-4 in Hyde Park and the problem is additions being added to side yards closing the gap between them and their neighbor.

Ms. Hankner asked if there is a way to compromise the problem with additions along with new construction. Mr. Kurtz responded that if the feeling is that this will decimate Hyde Park, rezone the SF-4 to SF-6 and make them all nonconforming uses.

**Motion:** Mr. Faux moved to expand SF-6 in Hyde Park and revert back to 3' least width and 12' sum of least width In SF-4.

**Second:** Ms. Hankner

**Vote:** All ayes (4-0), motion carries.

Mr. Mooney suggested that the staff, Mr. Witte and himself meet with Mrs. Bazeley before the next City Planning Commission meeting so that the Planning Commission can vote on any changes that may be made to the West Price Hill map.

**Motion:** Ms. Hankner moved approval of the draft Zoning Code as final incorporating the changes made today and the possibility of a map change in West Price Hill and to send the final Zoning Code to City Council.

**Second:** Mr. Faux

**Vote:** All ayes (4-0), motion carries.

### ADJOURNMENT

With no further business to consider, the meeting was adjourned.

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Margaret M. Moertl, Director  
Community Development & Planning

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Donald Mooney, Chairman  
City Planning Commission

Date:\_\_\_\_\_

Date:\_\_\_\_\_